

## **Regulations Applicable to Animal and Related Waste Control**

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***Kansas Administrative Regulations***  
**Agency 28**  
**Kansas Department of Health and Environment**

**Article 18.—Animal and Related Waste Control**

**28-18-1. Definitions.** The following terms and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning is clear from the context in which it is used. Terms and abbreviations not provided in this article shall have the meanings specified in K.S.A. 65-101 et seq. and amendments thereto; articles 5, 16, 18a, and 30; or the clean water act (CWA). If the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

- (a) “Animal unit” has the meaning specified in K.S.A. 65-171d, and amendments thereto.
- (b) “Animal unit capacity” has the meaning specified in K.S.A. 65-171d, and amendments thereto.
- (c) “Animal waste management system” means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of animal or other process wastes generated by confined feeding operations. This term shall include any of the following:
  - (1) Site grading to divert extraneous, uncontaminated precipitation runoff around the confined feeding facility;
  - (2) structures designed and constructed to collect, control the flow of, and direct animal or other process wastes;
  - (3) vegetation cover utilized for controlling erosion or for filtering animal or other process wastes;
  - (4) tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes;
  - (5) waste-retention lagoons or ponds;
  - (6) land used for the application, utilization, or disposal of animal or other process wastes; and
  - (7) waste treatment facilities.
- (d) “Certification” means a document issued by the secretary in lieu of a water pollution control permit, indicating that the facility meets applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.
- (e) “Change in operation” and “modification” mean any of the following:
  - (1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;
  - (2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or
  - (3) a change in construction or operation of a confined feeding facility that affects the collecting, storage, handling, treatment, utilization, or disposal of animal or other process wastes.
- (f) “Clean water act” and “CWA” mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on November 27, 2002.
- (g) “Closure plan” means a written document that identifies the practices and procedures that the operator of a confined feeding facility plans to use when closing the facility or any part of the facility.
- (h) “Confined feeding facility” has the meaning specified in K.S.A. 65-171d and amendments thereto.
- (i) “Department” and “KDHE” mean the Kansas department of health and environment.
- (j) “Director” means the director of the division of environment of the Kansas department of health and environment.
- (k) “Division” means the division of environment, Kansas department of health and environment.
- (l) “Entity,” for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, or federal, state, county, or municipal

agency or department.

(m) “Environmental protection agency” and “EPA” mean the United States environmental protection agency.

(n) “Equus Beds,” for the purposes of these regulations, means an aquifer underlying the sections of land listed in the following table:

County	Range	Township	Section
Harvey	01W	22S	06, 07, 18, 19, 30, 31
Harvey	01W	23S	06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	01W	24S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
Harvey	02W	22S	All sections
Harvey	02W	23S	All sections
Harvey	02W	24S	All sections
Harvey	03W	22S	All sections
Harvey	03W	23S	All sections
Harvey	03W	24S	All sections
McPherson	01W	19S	31, 32, 33, 34, 35
McPherson	01W	20S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33
McPherson	01W	21S	05, 06, 07, 18, 19, 30, 31
McPherson	02W	21S	12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	03W	18S	28, 29, 30, 31, 32, 33
McPherson	03W	19S	04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34
McPherson	03W	20S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35
McPherson	03W	21S	02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
McPherson	04W	18S	20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36
McPherson	04W	19S	01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
McPherson	04W	20S	01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36
McPherson	04W	21S	01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Reno	04W	22S	All sections
Reno	04W		23S All sections
Reno	04W		24S All sections
Reno	04W		25S All sections
Reno	04W	26S	All sections
Reno	05W	22S	All sections
Reno	05W	23S	All sections
Reno	05W	24S	All sections
Reno	05W	25S	All sections
Reno	05W	26S	All sections

County	Range	Township	Section
Reno	06W	22S	All sections
Reno	06W	23S	All sections
Reno	06W	24S	All sections
Reno	06W	25S	All sections
Reno	06W	26S	All sections
Reno	07W	22S	All sections
Reno	07W	23S	All sections
Reno	07W	24S	All sections
Reno	07W	25S	All sections
Reno	07W	26S	All sections
Sedgwick	01E	26S	06, 07, 08, 17, 18, 19, 20
Sedgwick	01W	25S	03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
Sedgwick	01W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32
Sedgwick	01W	27S	05, 06
Sedgwick	02W	25S	All sections
Sedgwick	02W	26S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36
Sedgwick	02W	27S	01
Sedgwick	03W	25S	01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36
Sedgwick	03W	26S	01, 02, 03, 04, 11, 12

(o) “Federal permit,” “national pollutant discharge elimination system permit,” and “NPDES permit” mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

(p) “Food animals” means animals, fish, or fowl produced for consumption.

(q) “Fur animals” means animals raised for the skin, pelt, or fur.

(r) “Groundwater,” as used in this article, means water located under the surface of the land that is or can be the source of supply for wells, springs, seeps, or streams, or that is held in aquifers. For the purposes of this article, groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which the groundwater can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

(s) “Habitable structure” has the meaning specified in K.S.A. Supp. 65-171d, and amendments thereto.

(t) “Impermeable synthetic membrane liner” means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer’s criteria for the maximum monitored or calculated seepage rate for the installed

membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).

(u) "Land application" means the distribution of animal or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(v) "Liner" means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between animal or other process wastes that are controlled or retained by animal waste management systems and waters of the state.

(w) "Maximum soil liner seepage rate" and "specific discharge" mean the flow rate of water through the liner of a waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as  $v = k(h/d)$ , in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom, divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum design depth, not considering design freeboard, shall be used.

(x) "Minimum standards of design, construction, and maintenance" means the following:

(1) Effluent standards and limitations;

(2) other performance standards for treatment or utilization; and

(3) other standards of design, construction, and maintenance for confined feeding facilities or animal waste management systems, published by the KDHE.

(y) "Monitoring" means all procedures using any of the following methods:

(1) Either systematic inspection or collection and analysis of data on the operational parameters of a confined feeding facility or an animal waste management system; or

(2) the systematic collection and analysis of data on the quality of the animal or other process wastes, groundwater, surface water, or soils on or in the vicinity of the confined feeding facility or animal waste management system.

(z) "National pollutant discharge elimination system" and "NPDES" mean the national system for the issuance of permits under 33 U.S.C. section 1342, and shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 33 U.S.C. section 1342.

(aa) "Nutrient management plan" means a written document that identifies the practices and procedures that the operator of a confined feeding facility that is required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the facility.

(bb) "Oil or gas well" shall have the meaning assigned to the term "well" in K.S.A. 55-150, and amendments thereto.

(cc) "Operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more confined feeding facilities.

(dd) "Pleasure animals" means dogs, cats, rabbits, horses, and exotic animals.

(ee) "Point source" has the meaning specified in K.A.R. 28-16-28b.

(ff) "Pollution" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(gg) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(hh) (1) "Process wastes" means any of the following:

(A) Excrement from animals, wastewater, and animal carcasses;

(B) precipitation that comes into contact with any manure, litter, bedding, or other raw, intermediate, or final material or product used in or resulting from the production of animals or direct products, including meat, milk, and eggs;

(C) spillage or overflow from animal or poultry watering systems;

(D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, milking

parlors, milking equipment, and other associated animal facilities;  
(E) wastes from washing animals or spraying animals for cooling;  
(F) wastes from dust control;  
(G) boiler blowdown and water softener regenerate wastes;  
(H) precipitation runoff from confinement, loading, and unloading areas;  
(I) spillage of feed, molasses, animal wastes, or any other process wastes described in this regulation;  
(J) discharges from land application fields that occur during application;  
(K) precipitation runoff from land application fields, if liquid or concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;  
(L) raw, intermediate, or finished materials associated with wastes or contaminated storm water runoff from animal waste or dead animal composting operations;  
(M) silo liquors; or  
(N) flows or runoff from waste storage areas.

(2) Process wastes shall not include animal wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(ii) “Public livestock market” has the meaning specified in K.S.A. 47-1001, and amendments thereto. For the purposes of these regulations, this term shall include public livestock markets where federal veterinary inspections are regularly conducted.

(jj) “Registration” means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(kk) “Salt solution mining well” has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

(ll) “Secretary” means the secretary of the Kansas department of health and environment.

(mm)(1) “Sensitive groundwater areas,” for the purpose of these regulations, means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. Each sensitive groundwater area shall be any section of land listed in “Kansas sensitive groundwater areas for wastewater lagoons,” prepared by KDHE and dated January 1, 2005, which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new animal waste-retention lagoon or expansion of an existing animal waste-retention lagoon may request that the director make a site-specific sensitive groundwater area determination. The request shall be made in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered to be a sensitive groundwater area, for the purpose of these regulations.

(nn) “Sewage” has the meaning specified in K.S.A. 65-164, and amendments thereto.

(oo) “Significant water pollution potential” means any of the following, as determined by the secretary:

(1) A livestock or animal feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct animal or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes, waste-retention lagoons or ponds, or waste treatment facility or facilities;

(2) lots, pens, or concentrated feeding areas with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants to waters of the state running through or proximate to the lots, pens, or concentrated feeding areas;

(3) any operation that cannot retain or control animal or other process wastes on the operator’s facility or property or adjacent property without the owner’s permission; or

(4) a livestock or animal feeding operation that has been determined to practice improper collection, handling, or disposal of animal or other process wastes that have the potential to degrade or impair the quality of any

waters of the state.

(pp) “Surface waters,” for water quality purposes, has the meaning specified in K.A.R. 28-16-28b.

(qq) “Truck-washing facility for animal wastes” means a truck-washing facility that exists solely for the purpose of washing animal wastes from trucks or trailers.

(rr) “Variance” means the secretary’s written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. Each variance authorized by the secretary shall be deemed to protect public health and the environment and to comply with the intent of these regulations and with federal NPDES permit requirements.

(ss) “Waste management plan” means a written document that identifies the practices and procedures that the operator of a confined feeding facility not required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the facility.

(tt) “Waste-retention lagoon or pond” means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining animal or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(uu) “Waste treatment facilities” means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and public health and the waters of the state will be protected.

(vv) “Water pollution control permit” and “permit” mean an authorization, license, or equivalent control document issued by the secretary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(ww) “Water quality standards” means the Kansas surface water quality standards as specified in K.A.R. 28-16-28b through K.A.R. 28-16-28g.

(xx) “Water well” has the meaning specified in K.S.A. 82a-1203, and amendments thereto.

(yy) “Waters of the state” has the meaning specified in K.S.A. 65-161, and amendments thereto.

(zz) “Whole pond seepage test” means a measurement of the evaporation from, and the change in water level of the waste-retention lagoon, pond, or structure, or swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in “standards for measuring seepage from anaerobic lagoons and manure storages,” by Jay M. Ham, Ph.D. and Tom M. DeSutter, dated 2003 and hereby adopted by reference; or

(2) any equivalent method approved by the secretary. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 65-171a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007.)

**28-18-2. Registration and application requirements.** (a) Each entity proposing the construction, modification, or expansion of an unregistered confined feeding facility, public livestock market, collection center, or transfer station and each operator of an existing, but unregistered, confined feeding facility, public livestock market, collection center, or transfer station shall submit a registration form for the facility to the secretary, if any of the following conditions is met:

(1) The proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.

(2) The proposed or existing unregistered facility presents a significant water pollution potential, as defined in K.A.R. 28-18-1.

(3) The proposed or existing unregistered facility is required by statute to obtain a permit from the secretary.

(4) The entity proposing the construction, modification, or expansion of an unregistered facility or the operator of an existing unregistered facility elects to register the facility in order to obtain either a permit or certification,

even though there is no requirement to obtain a permit or certification.

(b) Each entity or operator that submits a registration form to the department shall include the required \$25 fee.

(c) Each entity proposing the construction, modification, or expansion of a confined feeding facility, a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal waste and each operator of an unpermitted confined feeding facility, public livestock market, collection center, transfer station, or truck-washing facility for animal waste shall submit to the secretary a permit application for the facility if any of the following conditions is met:

(1) The proposed facility or existing unpermitted facility presents a significant water pollution potential, as defined in K.A.R. 28-18-1.

(2) The proposed facility or existing unpermitted facility is required by statute to obtain a permit.

(3) The entity proposing the construction, modification, or expansion of the facility or the operator of an existing unpermitted facility elects to obtain a permit, even though a permit is not required.

(d) Each entity or operator that submits a permit application to the department shall include the permit fee required by K.A.R. 28-16-56d.

(e) The animal unit capacity of a confined feeding facility using an animal waste management system, for species other than those included in the definition of animal unit, shall be determined by the secretary on a case-by-case basis. The quantity or concentration of animal waste produced by the species in comparison to those species addressed in the animal unit definition shall be the factor used by the secretary in determining the animal unit capacity.

(f) Each entity or operator proposing the construction, modification, or expansion of a confined feeding facility and each operator of an unpermitted confined feeding facility required by statute or regulation to obtain a federal permit shall apply to the secretary for a federal permit.

(g) Each entity or operator that is proposing the construction, modification, or expansion of a confined feeding facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes and that is required to obtain a permit or certification shall obtain a permit or certification from the secretary before initiating operation of the facility. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007.)

**28-18-3. Separation distance requirements.** (a) Separation distances between confined feeding facilities and any habitable structure shall conform to the provisions and requirements of K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(b) The operator shall provide to the department any information required to ascertain the distance to the nearest habitable structure or determine which habitable structure is the nearest to the proposed or existing confined feeding facility.

(c) When the animal unit capacity of a confined feeding facility is comprised of swine, in addition to other animals or fowl, the swine-specific separation distance requirements related to any habitable structure, wildlife refuge, or city, county, state or federal park shall be applied only to the animal unit capacity of the swine facility operation. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

**28-18-4. Filing of applications and payment of fees.** (a) Each application shall be filed according to K.A.R. 28-16-59.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal wastes, each applicant shall provide to the secretary the name or



names and mailing address or addresses of the following:

- (1) The United States post office or offices serving the immediate area of the confined feeding facility; and
  - (2) each owner of a habitable structure or any property located within one mile of the confined feeding facility.
- (c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a confined feeding facility, each applicant shall submit all of the following information:
- (1) A map identifying the location and layout of the confined feeding facility or the facility perimeter;
  - (2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the confined feeding facility or the facility perimeter;
  - (3) a map identifying all water wells on the facility property;
  - (4) a map identifying any streams and bodies of surface water within one mile of the confined feeding facility or the facility perimeter;
  - (5) for confined feeding facilities that utilize a waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing confined feeding facility;
  - (6) a waste management plan for any confined feeding facility whose operator is not required to obtain a federal permit;
  - (7) a nutrient management plan for any confined feeding facility whose operator is required to obtain a federal permit;
  - (8) a groundwater monitoring plan, if required; and
  - (9) a closure plan for any confined feeding facility whose operator is required to obtain a federal permit and that is located over the Equus Beds.
- (d) Confined feeding facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended March 16, 2007.)

**28-18-5. Transfer of a permit or certification.** (a) The automatic transfer of a permit shall be prohibited. Each operator wanting to transfer a water pollution control permit of a confined feeding facility shall make application consistent with the provisions of the regulations in this article.

(b) The automatic transfer of a certification shall be prohibited. Each operator wanting to transfer a certification for a confined feeding facility shall register with the department, in accordance with this article.

(c) The existing permit or certification shall remain in effect until the department authorizes the transfer by letter or reissues the permit or certification. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

**28-18-6. Development of a draft permit.** Development of each draft permit shall be consistent with the requirements of K.A.R. 28-16-60. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

**28-18-7. Public notice of permit actions and public hearings.** Public notice of permit actions and public hearings shall be consistent with the requirements of K.A.R. 28-16-61. Public hearings scheduled by the department shall address only those matters for which the secretary has authority. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997

Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

**28-18-8. Permit; terms and conditions.** (a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b) (1) Animal waste management systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Each operator of an animal waste management system for a confined feeding facility who is required to obtain a federal permit shall ensure that the animal waste management system is designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state. Any operator of an animal waste management system of a confined feeding facility may discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow from an animal waste management system designed, constructed, operated, and maintained to contain all animal and other process wastes:

(A) Animal or other process wastes; and

(B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the confined feeding facility.

(3)(A) Except as provided in paragraph (b)(3)(B), each animal waste management system for any confined feeding facility whose operator is not required to obtain a federal permit shall be designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Any operator of an animal waste management system for a confined feeding facility who is not required to obtain a federal permit may discharge animal or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes, each operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department, using the telephone numbers provided by the director. Each operator shall submit a written report to the department within three days of the incident.

(d) Each operator shall retain a copy of the current permit issued by the secretary at the site office for the facility or at a central records location.

(e) Each operator shall be responsible for advising the department within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

(f) Each operator shall operate the facility in a manner that minimizes or prevents any discharge that is in violation of the permit or that has a potential to adversely affect human health or the environment.

(g) Each operator shall, at all times, properly operate and maintain the animal waste management system and any related appurtenances that are installed or utilized by the operator to achieve compliance with the conditions of the permit. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 65-165, K.S.A. 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

**28-18-9. Certification; terms and conditions.** (a) Each operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a confined feeding facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and any appropriate enforcement action. If a significant water pollution potential exists as defined in K.A.R. 28-18-1, the operator shall apply for a permit. (Authorized by

K.S.A. 2003 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2003 Supp. 65-166a, K.S.A. 2003 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

**28-18-10. Permits; monitoring and reporting.** (a) Any monitoring and reporting required by the department in the terms and conditions of a permit, certification, order, directive, or consent agreement shall be conducted consistent with the provisions of K.A.R. 28-16-63, as appropriate.

(b) The emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes into surface waters of the state shall be reported to the department, pursuant to K.A.R. 28-16-27, within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(c) Any analysis required by a permit, certification, order, directive, or consent agreement of the department shall be performed in accordance with the provisions of 40 C.F.R. Part 136, as in effect on July 1, 1998, or as approved by the department.

(d) Each analysis shall be performed by a laboratory that has been certified by the department pursuant to K.S.A. 65-1711, and amendments thereto, or as approved by the department.

(e) 40 C.F.R. Part 136, as in effect on July 1, 1998, is adopted by reference. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

**28-18-11. Confined feeding facilities; federal requirements.** For the purpose of issuing federal permits and administering NPDES program requirements, the following definitions and provisions, as in effect on July 1, 2006 and as amended by 72 fed. reg. 40250 on July 24, 2007, are hereby adopted by reference:

(a) The concentrated animal feeding operation exclusions specified in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f);

(b) the provisions addressing concentrated animal feeding operations specified in 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e);

(c) the provisions addressing concentrated aquatic animal feeding operations specified in 40 C.F.R. 122.24 and appendix C to 40 C.F.R. Part 122; and

(d) except for 40 C.F.R. 412.32, 412.44, and 412.46, the provisions addressing effluent limitations for concentrated animal feeding operations specified in 40 C.F.R. Part 412. (Authorized by K.S.A. 2006 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, K.S.A. 65-166, K.S.A. 2006 Supp. 65-166a, K.S.A. 2006 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007; amended Jan. 4, 2008.)

**28-18-12. Design and construction of animal waste management systems.** (a) If a confined feeding facility represents a significant water pollution potential or if the operator of a facility is required by statute or regulation to obtain a permit, as determined by the secretary, the operator shall provide an animal waste management system that is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and either a waste management plan or nutrient management plan approved by the secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. Each applicant shall ensure that any new construction or new expansion of a confined feeding facility or animal waste management system meets the requirements of the “minimum standards of design, construction, and maintenance,” as defined in K.A.R. 28-18-1.

(b) The operator shall not initiate operation of the new confined feeding facility or animal waste management

system or the expanded portions of any existing confined feeding facility or animal waste management system, until after issuance of the new or modified permit by the secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the operator.

(c) For the purpose of these regulations, each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a confined feeding facility or animal waste management system, exclusive of any nutrient utilization plan, soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of confined feeding facilities that are submitted to comply with statutes and regulations shall provide KDHE with documentation that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification has been issued, within two years after the date on which the permit or permit modification is effective or pursuant to the requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a confined feeding facility that has been approved by the secretary and for which the required permit or permit modification is issued, within three years after the date on which the permit or permit modification is effective or as required by the permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years after the effective date of the permit or permit modification shall void the secretary's approval of the construction plans, specifications, and other associated plans. If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated by the secretary.

(3) If the approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit the construction plans, specifications, and other associated plans to the secretary for review and consideration for approval before initiating the construction or expansion of a confined feeding facility.

(f) Neither the approval of construction plans, specifications, or other required plans, nor the issuance of a permit or certification by the secretary shall prohibit the secretary from taking any enforcement action if the animal waste management system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, the secretary's approval of the plans or the secretary's issuance of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new confined feeding facility or animal waste management system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b.

(h) Each operator, when directed by the secretary, shall notify the department a minimum of two days before performing any soil sample collection activities or liner integrity testing.

(i) There shall be no deviation from plans and specifications submitted to and approved by the secretary, unless amended plans and specifications showing the proposed changes have been submitted to the department and approved by the secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, gas, or salt solution mining well within 600 feet of any planned location for a waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed waste-retention lagoon

or pond. Each active, abandoned, or plugged water, oil, gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion and when requested by the secretary, each operator shall certify that the animal waste management system was constructed in accordance with the plans approved by the secretary. If the operator utilized a professional engineer or consultant to monitor the construction of the animal waste management system, then the certification shall also be signed by the professional engineer or the consultant who monitored the construction or installation of the animal waste management system, including any waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and made available to the department, along with any supporting information, upon request. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

**28-18-13. Operation of animal waste management systems.** (a) Each animal waste management system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each animal waste management system shall be operated according to the plans approved by the secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the secretary and designed to protect public health and the environment.

(d) Each operator shall haul or transport animal or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of animal or other process wastes is practiced, the application shall be conducted considering site-specific conditions to ensure the appropriate agricultural utilization of the nutrients in the animal or process wastes.

(f) Irrigation practices shall be managed to minimize ponding or puddling of animal or other process wastes at the land application site. Irrigation practices shall be managed to ensure that animal or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of animal or other process wastes and contaminated storm water runoff from the confined feeding facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the secretary, liquid waste, concentrated liquid animal waste, or other liquid process waste shall not be land-applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of animal or other process wastes during these periods may be authorized by the secretary for use in filtering animal or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation event.

(2) Solid animal or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each operator, as required by the facility permit issued by the secretary, shall conduct sampling and analysis of animal or process wastes or sites utilized for the application of animal or process wastes from

confined animal feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the animal or process wastes at agronomic rates, and to ensure that public health and the environment are protected.

(2) (A) Each operator of a confined feeding facility not required to obtain a federal permit shall sample the soil of each field identified in the waste management plan for the confined feeding facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

**28-18-14. Inspections.** (a) Each operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each operator that develops or modifies biosecurity protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the biosecurity protocols.

(c) If any department inspector conducting an inspection of a confined feeding facility complies with the facility's biosecurity protocol, that inspector shall be allowed to access the animal waste management system to conduct inspections. Biosecurity protocols shall not restrict the reasonable access of any department inspector. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective Jan. 15, 1999; amended March 16, 2007.)

**28-18-15. Variance of specific requirements.** (a) Each operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)

**28-18-16. Waste-retention lagoon or pond closure requirements.** (a) Each operator of a confined feeding facility permitted by the department shall notify the department of any plans to cease operation of, close, or abandon the waste-retention lagoon or pond.

(b) Each operator shall maintain and comply with a valid water pollution control permit for the facility until closure of the waste-retention lagoon or pond is complete and all materials representing a threat to public health and the environment are removed.

(c) Each operator of a confined feeding facility that is located over the Equus Beds who is required to obtain a federal permit and who proposes the new construction or expansion of a waste-retention lagoon or pond shall develop and implement a waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit application to the department for consideration for approval. When submitting waste-retention lagoon or pond closure plans, each operator shall submit four copies of the plan.

(d) Each operator of a confined feeding facility required to obtain a federal permit shall develop and implement a waste-retention lagoon or pond closure plan if all of the following conditions are met:

- (1) The waste-retention lagoon or pond is located over the Equus Beds.
- (2) The operator is applying for the renewal of the permit after the effective date of this regulation.
- (3) The operator does not have an approved waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit renewal application to KDHE. When submitting a waste-retention lagoon or pond closure plan, each operator shall submit four copies of the plan.
- (e) Each waste-retention lagoon or pond closure plan shall include at a minimum the following information:
  - (1) A description of all animal waste management system components utilized to contain, control, or store process wastes at the facility;
  - (2) a description of the procedures to be employed to remove and dispose of animal or other process wastes;
  - (3) a description of the maintenance, deactivation, conversion, or demolition of all waste-retention lagoons or ponds or the closure of any waste-retention lagoon or pond by one of the following methods:
    - (A) Removing the berms, and leveling and revegetating the site to provide erosion control;
    - (B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;
    - (C) retaining the structure or structures for future use as a part of an animal waste management system; or
    - (D) using any other method approved by the secretary that will be protective of the environment and will meet all statutory and regulatory requirements; and
  - (4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the confined feeding facility.
- (f) Each operator of a confined feeding facility required to have a waste-retention lagoon or pond closure plan shall amend and submit the amended plan to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:
  - (1) Any significant changes in operation of the facility;
  - (2) any significant change or modification in the animal waste management system; or
  - (3) any other significant conditions affecting the facility or the animal waste management system.
- (g) Each operator of a confined feeding facility required to develop a waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the facility or at a central records location, in a manner that is accessible to inspection by representatives of the department.
- (h) The closure of a waste-retention lagoon or pond shall be completed within six months of either of the following:
  - (1) Notification to the department of the proposed closure of the waste-retention lagoon or pond; or
  - (2) termination of operations for any confined feeding facility whose operator is required to develop and implement a waste-retention lagoon or pond closure plan.
- (i) Each operator seeking an extension of time for closure shall submit a written request to the secretary. The request shall detail the reasons for the extension. Only weather conditions or the legal change in ownership of the confined feeding facility shall be grounds for the secretary to consider an extension.
- (j) If the operator of a confined feeding facility is unwilling or unable to properly close the waste-retention lagoon or pond, the owner of the facility and the property owner shall be responsible for closing the waste-retention lagoon or pond in accordance with these regulations and in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective March 16, 2007.)

**28-18-17. Groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities.** (a) The provisions of this article shall not apply to any permitted waste-retention lagoon or pond or waste treatment facility that is in existence or that the secretary approved for construction before the effective date of this regulation, unless information becomes available showing that the waste-retention lagoon or pond or the waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article shall not apply to any existing or proposed waste-retention lagoon or pond or waste treatment facility located at a confined feeding facility if all of the following conditions are met:

(A) The confined feeding facility existed on July 1, 1994.

(B) The operator registered the confined feeding facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed waste-retention lagoon or pond or waste treatment facility is no larger than that necessary to serve the facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed waste-retention lagoon or pond or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a confined feeding facility meeting the requirements of paragraph (b)(1) of this regulation and proposing to use a waste-retention lagoon or pond or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a waste-retention lagoon or pond or waste treatment facility other than those described in subsections (a) and (b) shall be located a minimum of 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the waste-retention lagoon or pond or the waste treatment facility. Each operator of or permit applicant for a confined feeding facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each operator or permit applicant shall ensure that each liner for a new or expanded portion of a waste-retention lagoon or pond or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than  $\frac{1}{4}$  inch per day.

(2) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than  $\frac{1}{10}$  inch per day.

(3) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than  $\frac{1}{10}$  inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the waste-retention lagoon or pond or waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process in accordance with K.A.R. 28-18-15.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four copies of the test results to the department.

(f) For the purpose of K.A.R. 28-18-1 through K.A.R. 28-18-17, an imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: table of numeric criteria," dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective March 16, 2007.)